



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Howard v Commissioner of Taxation - *Foreign Evidence Act 1994* (Cth) - costs of taking evidence overseas (I, B, C)

Hitchens v Zurich Australia Limited - Income Replacement Insurance policy - defendant seeking leave to amend its defence (I)

CSR Ltd v Jamie Leonard Smith - *Workplace Injury Management & Workers' Compensation Act 1998* (NSW) - application seeking review of decision of Appeal Panel of the Workers Compensation Commission (I)

Marble Group (WA) Pty Ltd v ARES Capital Management Pty Ltd t/as Rismark International - Contracts - construction of head lease & sublease (B, C)

Leahy v Fimiston Investments Pty Ltd & Anor - *Property Law Act 1974* (Qld) - relief from forfeiture (B, C)

Togito Pty Ltd v Pioneer Investments (Aust) Pty Ltd & Ors (No 2) - Costs (I, B, C)

XYZ v Portsmouth Hospitals NHS Trust - Medical negligence - assessment of damages (I)



Summaries with links (5 minute read)

Friday 25 February 2011

Howard v Commissioner of Taxation [2011] FCA 137

Federal Court of Australia

Jessup J (in Melbourne)

Foreign Evidence Act 1994 (Cth) - whether expenses incurred by the Court in taking evidence in London should be paid, in the first instance, by the applicant, as the party calling the evidence, or by the parties equally - New South Wales practice - applicant will be responsible, in the first instance, for costs of the venue & for obtaining a transcript of the evidence.

[Howard](#) (I, B, C)

Hitchens v Zurich Australia Limited [2011] NSWSC 66

Supreme Court of New South Wales

Macready AJ

Income Replacement Insurance policy - defendant seeking leave of the Court to amend its defence - question of prejudice to plaintiff - application refused - case law from the United Kingdom & Australia examined in detail.

[Hitchens](#) (I)

CSR Ltd v Jamie Leonard Smith [2011] NSWSC 68

Supreme Court of New South Wales

Harrison AsJ

Workplace Injury Management & Workers' Compensation Act 1998 (NSW) - medical assessment - application seeking review of a decision of Appeal Panel of the Workers Compensation Commission - whether Appeal panel was obliged to hear oral submissions - application for judicial review unsuccessful - detailed examination of New South Wales case law.

[CSR Limited](#) (I)



Marble Group (WA) Pty Ltd v ARES Capital Management Pty Ltd t/as Rismark International [2010] NSWSC 44

Supreme Court of New South Wales

White J

Contracts - construction of head lease & sublease - estoppel - plaintiff sub-lessee of premises in Margaret Street, Sydney; defendant was sub-lessor - whether, on expiry of the sublease, plaintiff was required to make good the premises by removing its fit-out, or whether its only obligation was as per clause 7.1(d) of sublease in relation to tenant's obligations, to repaint the premises &, subject to fair wear & tear, to repair any damage to the premises including any damaged ceiling, tiles or carpet - declaration made that plaintiff's obligation limited to obligation contained in clause 7.1(d) of the sublease.

[Marble Group](#) (B, C)

Leahy v Fimiston Investments Pty Ltd & Anor [2011] QSC 22

Supreme Court of Queensland

McMeekin J

Property Law Act 1974 (Qld) - applicant the registered proprietor of land the subject of a registered lease & sub lease - applicant seeking to recover possession of the land - respondent sublessee - respondent seeking relief from forfeiture.

[Leahy](#) (B, C)

Togito Pty Ltd v Pioneer Investments (Aust) Pty Ltd & Ors (No 2) [2011] QSC 421

Supreme Court of Queensland

Margaret Wilson J

Costs - plaintiff's claim against first & second defendants had been dismissed - first defendant's claim against plaintiff & third defendant by counterclaim had been dismissed - whether costs to be assessed on indemnity basis - answer 'no.'

[Togito](#) (I, B, C)

[Togito](#)- decision 11 November 2010



From the United Kingdom...

XYZ v Portsmouth Hospitals NHS Trust [2011] EWHC 243 (QB)

High Court of England & Wales, Queen's Bench Division

Spencer J

Medical negligence - assessment of damages - kidney donation - renal failure - loss of future earnings - future medical expenses - total award of £6,740,646.

[XYZ](#) (I)

John Fisher

(b. Beverley, Yorkshire 1459 [19 October 1469?] - d. Tower Hill, London 22 June 1535)

One of the greatest scholars & teachers of his day, he assembled one of the finest libraries in Europe - educated at Michaelhouse (absorbed into Trinity College, 1546,) Cambridge, of which he was appointed master in 1497 - elected Chancellor of the University of Cambridge in 1504; in the same year became Bishop of Rochester - he was a patron of Erasmus who taught at Cambridge under his aegis - he protested strongly against Henry VIII's plans to divorce Catherine of Aragon - refused to take the Oath of Supremacy acknowledging the King as the head of the Church - imprisoned in the Tower, his property was confiscated & he was beheaded in 1535 - he was canonized by the Catholic Church in 1935 & is commemorated on 22nd June.

[John Fisher - Wikipedia, the free encyclopedia](#)

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